

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 18373
[Redacted],)	
)	DECISION
Petitioner.)	
_____)	

PROCEDURAL BACKGROUND

On September 14, 2004, the Tax Discovery Bureau (Bureau) of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (Petitioner). The Notice of Deficiency Determination asserted tax, penalty, and interest in the amount of \$10,248 for the 2000 and 2001 taxable years. The Notice advised the Petitioner she could file a petition for redetermination with the Commission if she disagreed with the Bureau's determination.

On October 1, 2004, the Petitioner filed a letter of protest the Commission treated as a petition for redetermination. The Petitioner requested an informal conference to discuss her petition for redetermination. The Tax Commission conducted the informal conference on March 17, 2005. The Petitioner did not participate; however, her husband participated in the conference by telephone.

The Commission has reviewed all of the documents and information submitted by the Petitioner and by the Tax Discovery Bureau, and now issues its decision. For the reasons set forth below, the Commission affirms the deficiency determined by the Bureau.

THE AUDIT

This is a nonfiler case. The Petitioner failed to file both federal and Idaho individual income tax returns for the 2000 and 2001 taxable years. The Petitioner lived in Idaho during the taxable years in question. The Petitioner's spouse received income during each of the years at issue. A

corporation located in [Redacted] reported that, for the taxable year 2001, the corporation distributed income to the Petitioner's spouse in the amount of \$101,565. The same corporation reported that for the taxable year 2000, the corporation distributed income to the Petitioner's spouse in the amount of \$111,424.

Under the community property laws of Idaho, income earned by spouses becomes community property. Idaho Code § 32-906. In Idaho, the interest of a wife in wages, salary and other community property is a present vested interest, equal in degree, nature and extent to that of the husband. Hansen v. Blevins, 84 Idaho 49, 367 P.2d 758 (1962). Thus, because the income received by the Petitioner's spouse was community property, the Petitioner had an immediately vested interest in and right to one-half of the income, just as he had a right to one-half of the income the Petitioner received. With the right to exercise control over the income comes the duty to pay tax on the income. If the Petitioner had filed a separate tax return, under the community property laws of Idaho, she would have been required to pay tax on one-half of her income and one-half of her spouse's income.

Idaho Code § 63-3030 provides that every resident who has gross income, as defined by Section 61(a) of the Internal Revenue Code, exceeding a specified dollar amount is required to file an Idaho individual income tax return. The filing threshold amount for a married individual filing a separate return was \$13,400 for the taxable year 2000 and \$13,850 for the taxable year 2001. The Petitioner's vested interest in the income reported by the California corporation was well in excess of these statutory thresholds.

A Tax Enforcement Specialist (specialist) of the Bureau reviewed the income information reported by the California corporation and determined the Petitioner was required to file Idaho returns pursuant to Idaho Code § 63-3030. In a letter dated June 23, 2004, the

specialist notified the Petitioner that absent additional information it appeared the Petitioner had a filing requirement. The specialist requested that the Petitioner file the necessary returns and direct the returns to the specialist's attention.

The Petitioner responded and stated the income she received was not subject to tax and asserted other arguments generally made by tax protestors. The specialist recognized the Petitioner's arguments as tax protestor arguments the Commission has previously addressed and rejected. Therefore, after receiving the Petitioner's response, the specialist prepared provisional returns for the 2000 and 2001 taxable years.

The specialist divided the income equally between the Petitioner and her husband because the income received by the Petitioner was community property. The specialist prepared a provisional return for the Petitioner assuming a "married filing separately" status and provided the Petitioner with the appropriate personal exemptions, deductions, a grocery credit, and a credit for withholding tax.

The total deficiency determined in the provisional returns amounted to \$10,248 (tax, penalty, and interest). The specialist subsequently issued a Notice of Deficiency Determination to the Petitioner. The Notice of Deficiency Determination included an explanation of how the deficiency was calculated, a copy of the provisional returns prepared by the specialist, a document showing the calculation of interest, and an explanation of the Petitioner's right to request a redetermination.

THE PROTESTED ISSUES

The Petitioner seeks a redetermination of the deficiency determined by the Bureau on two grounds. The Petitioner apparently believes she is not required to report or pay taxes on her wages and other compensation because: (1) her income is not taxable since it does not derive

from a “source” listed in Internal Revenue Code § 861; and (2) she cannot be forced to file a return reporting such income as taxable as the tax return would amount to self-incrimination or perjury on her part.

LAW AND ANALYSIS

State and federal courts have rejected these common tax protestor themes time and time again. In Coleman v. Commissioner of Internal Revenue, 791 F.2d 68, Judge Easterbrook penned,

Some people believe with great fervor preposterous things that just happen to coincide with their self-interest. “Tax protesters” have convinced themselves that wages are not income, that only gold is money, that the Sixteenth Amendment is unconstitutional, and so on. These beliefs all lead--so tax protesters think--to the elimination of their obligation to pay taxes. The government may not prohibit the holding of these beliefs, but it may penalize people who act on them.

The Petitioner asserts some of the same arguments discussed by Judge Easterbrook. She believes her tax obligation has somehow been eliminated despite the fact that she resided in Idaho during the taxable years at issue.

1. Internal Revenue Code Section 861 Does Not Apply to Resident Taxpayers.

The Tax Commission has addressed the argument regarding Internal Revenue Code section 861 in several published decisions. *See for example* Idaho State Tax Commission, Decision, Docket Nos. 15686 and 16145. Internal Revenue Code section 861 (IRC § 861) is an income-sourcing rule applied at the federal level regarding the income of nonresident aliens and foreign corporations. Both the Internal Revenue Service and the courts have held that IRC § 861 does not apply to resident taxpayers.

Idaho and federal income taxes are based on a person’s gross income. Internal Revenue Code section 61 defines the term “gross income” to mean all income from whatever source

derived and then it gives a non-exclusive list of various types of income. The federal regulations state that U.S. citizens (and resident aliens) are taxed on all of their income regardless of where the source is located: “all citizens of the United States, wherever resident, and all resident alien individuals are liable to the income taxes imposed by the Code whether the income is received from sources within or without the United States.” Treas. Reg. § 1.1-1(b). Idaho follows the same rule in taxing a resident’s income. Idaho Code § 3002, provides:

63-3002 Declaration of intent. It is the intent of the legislature by the adoption of the act, **insofar as possible to make the provisions of the Idaho act identical to the provisions of the Federal Internal Revenue Code** relating to the measurement of taxable income, to the end that the taxable income reported each taxable year by a taxpayer to the internal revenue service shall be the identical sum reported to the state, subject only to modifications contained in the Idaho law; to achieve the result by the application of the various provisions of the Federal Internal Revenue Code relating to the definition of income, exceptions therefrom, deductions (personal and otherwise), accounting methods, taxation of trusts, estates, partnerships and corporations, basis and other pertinent provisions to gross income as defined therein, resulting in an amount called "taxable income" in the Internal Revenue Code, and then to impose the provisions of the act thereon to derive a sum called "Idaho taxable income"; **to impose a tax on residents of the state measured by Idaho taxable income wherever derived** and on the Idaho taxable income of nonresidents which is the result of activity within or derived from sources within the state. **All of the foregoing is subject to modifications in Idaho law** including, without limitation, modifications applicable to unitary groups of corporations, which include corporations incorporated outside the United States.

Idaho Code § 3002 (emphasis added).

However, nonresident aliens and foreign corporations are taxed only on income from sources within the United States. Accordingly, the federal tax code defines the sources of income (and deductions) for nonresident aliens and foreign corporations. For nonresident aliens and foreign corporations: IRC § 861 defines income earned within the United States; IRC § 862

defines income earned without the United States; IRC § 863 provides rules for allocating income, expenses, losses and deductions that are both within and without the United States; and IRC § 864 sets forth specific definitions and special rules for the determination of domestic and foreign income. IRC § 865 provides sourcing rules for sales of personal property.

The courts have rejected the argument that IRC § 861, which pertains to the taxation of nonresident aliens and foreign corporations, somehow supersedes IRC § 61 and the other provisions relating to the taxation of citizens and resident aliens. *See Habersham-Bey v. Commissioner*, 78 T.C. 304, 309 (1982). *Aiello v. Commissioner*, T.C. Memo. 1995-40; *Solomon v. Commissioner*, T.C. Memo 1993-509 and *Dacey v. Commissioner*, T.C. Memo 1992-187. *See also Peth v. Breitmann*, 611 F. Supp 50 (E.D. Wis. 1985). The courts found that the argument is based on a misinterpretation and inappropriate application of the IRC § 861.

2. Theoretical or Blanket Assertions of Potential Perjury or Self-Incrimination Does Not Relieve a Person from Her or His Statutory Obligation to File Tax Returns.

While both the federal and Idaho tax laws are based on honest and forthright self-reporting, this does not support the argument that these laws are optional. *Lonsdale v. United States*, 919 F.2d 1440, 1448 (10th Cir. 1990); *Wilcox v. Commissioner*, 848 F.2d 1007, 1008 (9th Cir. 1988); *United States v. Witvoet*, 767 F.2d 338, 339 (7th Cir. 1985).

It is true that the Fifth Amendment of the United States Constitution protects an individual from compelled self-incrimination. It is equally true that taxpayers who deliberately supply false information may be prosecuted for perjury. However, it is well settled that blanket claims of Fifth Amendment immunity are insufficient to avoid the legal requirement to file an income tax return. *Garner v. United States*, 424 U.S. 648, 651 (1976); *California v. Byers*, 402 U.S. 424, 430 (1971); *United States v. Campbell*, 619 F.2d 765, 769 (8th Cir. 1980); *United States v. Stout*, 601 F.2d 325, 332 (7th Cir. 1979); *United States v. Edelson*, 604 F.2d 232, 235

(3d Cir. 1979); United States v. Johnson, 577 F.2d 1304, 1311 (5th Cir. 1978); Idaho State Tax Commission v. Peterson, 107 Idaho 260, 262 (1984). Absent some factual basis to show that the Petitioner is faced with a real and substantial danger of self-incrimination, she remains legally obligated to fill out and file her Idaho return. See, e.g., Marcshetti v. United States, 390 U.S. 39, 53 (1968). (“The central standard for the privilege’s application has been whether the claimant is confronted by substantial and ‘real,’ and not merely trifling or imaginary, hazards of incrimination.”).

The same analysis applies with respect to the Petitioner’s blanket assertion of potential perjury. The Petitioner does not dispute that she received income in a sufficient amount to trigger Idaho’s filing requirement. Therefore she should have filed a return and reported the gross income she received. The reporting of gross income is only one part of the return. To the extent the Petitioner believed any portion of her income was not taxable, she, like any other taxpayer, could make the appropriate deductions in other sections of the return to arrive at her “taxable income” (the portion of gross income which is taxable). In this case, the point is moot. As explained above, the Petitioner’s claim that her income was not taxable is without merit.

CONCLUSION

The Tax Commission is charged with the duty of examining the returns filed with it and determining the correct amount of tax due.

63-3040. EXAMINATION OF RETURN AND DETERMINATION OF TAX. As soon as practicable after the return is filed, the state tax commission shall examine it and shall determine the correct amount of the tax.

In the event a person fails to file a tax return or to pay the proper amount of individual income tax, Idaho law specifically provides the Commission with the authority to issue a Notice of Deficiency Determination.

63-3045. NOTICE OF REDETERMINATION OR DEFICIENCY -- INTEREST. (1) (a) If, in the case of any taxpayer, the state tax commission determines that there is a deficiency in respect of the tax imposed by the title, the state tax commission shall, immediately upon discovery thereof, send notice of such deficiency to the taxpayer by registered or certified mail or by other commercial delivery

Idaho law clearly sets forth the Petitioner's obligation to file a tax return and pay the amount of tax correctly shown as due on that return. The Idaho income tax filing requirements are set out in Idaho Code § 63-3030. Any resident who, during the taxable year, has a gross income in excess of the stated threshold amount must file a return.

Contrary to the Petitioner's arguments, she had taxable income subject to Idaho individual income tax. The Enforcement Specialist correctly determined the Petitioner's income was subject to Idaho individual income tax, prepared provisional returns, and issued a Notice of Deficiency Determination. It is well settled in Idaho that provisional returns prepared by the Idaho State Tax Commission are presumed to be correct. Albertson's Inc. v. State, Dept. of Revenue, 106 Idaho 810, 814 (1984); Parsons v. Idaho State Tax Com'n, 110 Idaho 572, 574-575 n.2 (Ct. App. 1986).

The burden is on the Petitioner to show that the tax deficiency is erroneous. Id. The Petitioner has failed to show that the provisional returns prepared by the Tax Commission were incorrect. Therefore, based on the information available, the Tax Commission finds the provisional returns to be a fair representation of the Petitioner's taxable income for the taxable years in question and that the amount shown due on the Notice of Deficiency Determination is true and correct.

WHEREFORE, the Notice of Deficiency Determination dated September 14, 2004, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the Petitioner pay the following taxes, penalty, and interest.

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2000	\$3,836	\$ 959	\$1,349	\$6,144
2001	\$3,247	\$ 812	\$ 883	<u>\$4,942</u>
			TOTAL DUE	<u>\$11,086</u>

Interest is calculated through July 30, 2005.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayer's right to appeal this decision is enclosed with the decision. As set forth in the enclosed explanation, you must deposit with the Tax Commission twenty percent (20%) of the total amount due in order to appeal this decision. The twenty percent deposit in this case is \$2,217 and will be held as security for the payment of taxes until the appeal is finally resolved.

DATED this ____ day of _____, 2005.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2005, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[REDACTED]

Receipt No.
